



DISCIPLINARY POLICY

Adopted on: 24th May 2022

Review Date: May 2023

1.0 **PURPOSE, SCOPE AND PRINCIPLES**

- 1.1 Datchworth Parish Council aims to provide a high-quality service to our service users and visitors and to encourage positive working relations between colleagues. It is important, therefore, that staff maintain high standards of conduct. Most of the time staff achieve this. However in certain situations it is necessary to use disciplinary action. In such circumstances this disciplinary procedure will be used to ensure that fair and consistent action is taken.
- 1.2 This policy applies to all employees to ensure consistent and fair treatment for all in the council in accordance with the Equality Act 2010. The policy has been developed in accordance with the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice, 'Discipline and Grievance Procedures'.
- 1.3 Informal action will be considered, where appropriate, to resolve problems.
- 1.4 No disciplinary action will be taken against an employee until the case has been fully investigated.
- 1.5 For formal action the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made at a disciplinary meeting.
- 1.6 Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.
- 1.7 At all stages of the formal procedure the employee will have the right to be accompanied by a trade union representative or work colleague.
- 1.8 No employee who has passed their probation will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
- 1.9 At all stages of the following procedure, where specified employees/committee members are designated to handle different stages, Datchworth Parish Council reserves the right to reasonably substitute suitable alternatives.
- 1.10 An employee will have the right to appeal against any disciplinary action.
- 1.11 The procedure may be implemented at any stage if the employee's alleged misconduct warrants this.

2.0 THE RIGHT OF ACCOMPANIMENT

- 2.1 Employees may be accompanied or represented by a workplace colleague or a trade union representative at any formal disciplinary, investigatory meeting, disciplinary hearing or appeal meeting.
- 2.2 The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining their case

3.0 TYPES OF MISCONDUCT

- 3.1 Misconduct normally falls into two main categories:
- General misconduct
 - Gross misconduct

GENERAL MISCONDUCT

- 3.2 General misconduct is categorised as the kind of actions where a lower-level warning would be seen as sufficient to draw the employee's attention to the need to improve depending on the circumstances of the case.
- 3.3 However in the following circumstances general misconduct would normally result in a written or final written warning:
- where general misconduct is prolonged and/or there are repeated acts of misconduct, or
 - there is more than one misconduct issue, or
 - they are action(s) of a nature that verge on gross misconduct.

GROSS MISCONDUCT

- 3.4 ACAS provides the following list as examples of offences which are normally regarded as gross misconduct:
- theft or fraud
 - physical violence or bullying
 - deliberate and serious damage to property
 - serious misuse of an organisation's property or name
 - deliberately accessing internet sites containing pornographic, offensive or obscene material
 - serious insubordination
 - unlawful discrimination or harassment
 - bringing the organisation into serious disrepute
 - serious incapability at work brought on by alcohol or illegal drugs
 - causing loss, damage or injury through serious negligence
 - a serious breach of health and safety rules
 - a serious breach of confidence
 - acts of dishonesty

3.5 Gross misconduct is defined as those acts which are so serious in their nature that they destroy the mutual relationship of trust and confidence between the employee and the employer and make any further working relationship impossible. The above are examples of gross misconduct but this is not an exhaustive list.

4.0 INFORMAL DISCIPLINARY PROCEDURE

4.1 Where minor problems in conduct are alleged, it is the HR Committee's responsibility to take action to ensure that the individual is made aware of the problem.

4.2 The manager will usually have an informal discussion with the member of staff to investigate the matter and decide on an appropriate course of action. Formal steps will be undertaken if the matter is not resolved or if informal discussion and warning is not appropriate in the circumstances.

4.3 A note of the meeting and any informal warning issued must be made by the manager and a copy held on the employee's HR file. Informal action is not subject to time limits for disciplinary purposes.

5.0 FORMAL DISCIPLINARY PROCEDURE

5.1 The formal disciplinary procedure will be used where:

- Conduct problems are considered too serious to be dealt with informally in the first instance, or
- An employee fails to meet Datchworth Parish Council's expected standards of conduct after having previously received an informal warning in relation to any aspect of their conduct.

5.2 The Council will give employees reasonable notice of any meetings in this procedure. Employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submission

5.3 If the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date

5.4 The time limits in this procedure will be followed where possible, should these need to be adjusted this will be communicated to the employee.

5.5 Information about an employee's disciplinary matter will be restricted to those involved in the employment relationship. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee and management. The employee's disciplinary records will be held by the Council in accordance with the Data Protection Act 2018

5.6 Recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition.

- 5.7 An employee may raise a grievance after disciplinary procedures have begun. If this happens the nominated member of the HR Committee (or substitute) should consider suspending the disciplinary case for a short period of time (no more than one week) to consider the implications of the grievance upon the disciplinary.
- 5.8 If the grievance is related to the disciplinary it is permissible to deal with them concurrently. If the grievance is raised before the appeal stage of the disciplinary procedure and it's related to the disciplinary, the grievance can be heard as part of the disciplinary procedure. If the employee raises the grievance after the disciplinary process has been completed, the full grievance procedure should be followed. Employees cannot raise a grievance against a disciplinary sanction. The Appeals process should be used in this case.
- 5.9 If an employee is suspended following allegations of misconduct; it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it. Suspension is not a disciplinary penalty and does not imply that any decision has already been made about the allegations.

6.0 INVESTIGATION

- 6.1 Where a matter arises which is suspected or believed to be a disciplinary matter, Datchworth Parish Council will designate an internal or external investigator as appropriate to investigate the matter promptly, reasonably and adequately.
- 6.2 The employee will be informed of the nature of the allegation(s) being investigated.
- 6.3 The investigation will be conducted with the aim of establishing the facts of the case, and may include:
- Interviewing the employee
 - Interviewing any witnesses, and obtaining signed and dated statements
 - Collecting documentary evidence
 - Seeking further information from internal and external parties
- 6.4 Where the employee is interviewed as part of the investigation, it should be made clear that this is part of the investigation and not a formal disciplinary hearing.
- 6.5 The investigator will prepare a report of the investigation to present to a nominated member of HR Committee. If on completion of the investigation the investigator conducting the process concludes on the balance of probabilities the allegation of misconduct is justified and may require more than an informal warning, a formal disciplinary hearing will be arranged.

6.6 The investigator will normally present management's case at the disciplinary hearing.

7.0 THE DISCIPLINARY MEETING

7.1 If the HR committee member allocated to read the investigation report decides that there is a case to answer, a formal disciplinary meeting will be arranged. No councillor with direct involvement in the matter shall normally be involved in the investigation or formal disciplinary hearing.

7.2 The employee will be invited in writing to attend a disciplinary meeting. The letter will detail the following:

- the name of the HR Committee member or suitable substitute hearing the case
- details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting by a workplace colleague or a trade union representative.
- a copy of the investigation report, all the supporting evidence and a copy of the Council's disciplinary procedure
- the time and place for the meeting. The employee will be given reasonable notice of the hearing (at least 5 working days)
- informed of any witnesses being called to the hearing and given the opportunity to request other witnesses to attend (the any witness must be agreed with the chair as appropriate/relevant).
- that the employee and the Council will provide each other with all supporting evidence at least 3 working days before the meeting.

7.3 The disciplinary meeting will be conducted as follows:

- the nominated member of the HR Committee (or substitute) will chair the meeting and ensure that everyone has received all the relevant documents
- the Investigator will present the findings of the investigation report setting out the case and present supporting evidence (including any witnesses)
- the chair and employee then have the opportunity to ask the investigator questions on their case presentation
- the employee (or the companion) will set out their case and present evidence (including any witnesses)

- the chair and investigator have the opportunity to ask the employee questions in respect to their presentation
- the employee (or the companion) will have the opportunity to sum up their case
- the Chair will write to the employee with the hearing outcome with the reasons within five working days of the meeting. The Chairman will also notify the employee of the right to appeal the decision where applicable

8.0 DISCIPLINARY HEARING OUTCOMES

8.1 Although there are three levels of disciplinary action, this does not mean that all these levels must always be followed before a dismissal is considered. Action may be implemented at any level depending on the seriousness of the misconduct involved.

8.2 Action in cases other than those involving gross misconduct

Where a reasonable belief in the employee's culpability in relation to the misconduct alleged is established on the balance of probabilities, the following disciplinary action may be taken depending on the nature of the misconduct and any mitigating circumstances.

FIRST WRITTEN WARNING (A)

8.3 Where following a disciplinary hearing, an employee is found to have committed general misconduct they may be given a written warning. The warning should set out the details of the complaint, the improvement required, and the timescale, and the consequences of any further misconduct. A copy of the written warning will be kept on the employee's personal file but will normally be disregarded for disciplinary purposes after one year, subject to satisfactory conduct and performance.

FINAL WRITTEN WARNING (B)

8.4 In the following circumstances the employee will be issued with a final written warning where an employee's conduct:

- Continues to be unsatisfactory despite the issue of a first written warning, or
- Is sufficiently serious to justify only one written warning, but insufficiently serious to justify dismissal

The final written warning will follow the same format as in (a) above, except that it will be spent for disciplinary purposes after 18 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

Warnings involving safeguarding children or vulnerable adults will be placed on the employee's personal file permanently.

DISMISSAL (C)

- 8.5 For an act or acts of further misconduct (other than gross misconduct) by an employee who is under a final written warning given in accordance with (b) above, the employee will be dismissed with notice or with pay in lieu of notice.
- 8.6 **Gross Misconduct:** In cases where, after a disciplinary hearing, on the balance of probabilities an employee's culpability of gross misconduct is established (see definitions in Section 3.4) the employee may be summarily dismissed without either notice or payment in lieu of notice. This means that the employee can be dismissed without any prior warning(s).

9.0 THE APPEAL PROCEDURE

- 9.1 An employee has the right of appeal against any formal disciplinary action taken which they believe is unjust.
- 9.2 An employee can appeal against a disciplinary sanction on the following grounds:
- There was a significant breach of the procedure.
 - A reasonable person could not have reached the decision to find against the employee on the basis of the evidence submitted.
 - The penalty was too harsh, taking into account the seriousness of the offence and any mitigating circumstances.
 - Significant new evidence has become available, and that evidence could not have been available at the time of the original hearing.
- 9.3 An employee who wishes to appeal must lodge the appeal in writing with the HR Committee; setting out briefly the grounds of the appeal, no longer than 5 working days after the employee has been notified in writing of the disciplinary penalty.
- 9.4 The member nominated by the HR Committee to hear the appeal will write to the employee with details of the arrangements for hearing the appeal as soon as reasonably practicable, which will be held without unreasonable delay.

- 9.5 The appeal will be conducted impartially and where possible by a member who has not been previously involved in the case.
- 9.6 Appeal hearings will not normally rehear the whole case but will focus on the grounds of appeal. Further evidence may be introduced by either side if it is relevant to the grounds for the appeal and provided it is received within the specified timescale of 3 working days before the date of the hearing.
- 9.7 Following the appeal hearing, the Chair hearing the appeal should retire to consider their decision and the employee will be informed in writing of the decision as soon as practicable confirming that this decision is the final stage of the appeals procedure.

This policy will be reviewed every year or earlier if so required by legislation or additional material.

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